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OFFICE OF PETITIONS

In re Application of :
Lee et al. :
Application No. 10/721,480 : DECISION ON
Filed: 26 November, 2003 : PETITION
Atty Docket No. 5649-1218 :

This is a decision in reference to the petition filed on 7 February, 2005, which is treated as a petition filed under 37 CFR 1.10(c), requesting that the above identified application be accorded a filing date of 25 November, 2003, rather than the currently-accorded filing date of 26 November, 2003.

The petition is **dismissed**.

On 26 November, 2003, the application was filed. On 18 January, 2005, the petition filed on 3 January, 2005, was granted, and the application was accorded a filing date of 26 November, 2003, the date that the application papers were shown to have been received in the Office.

Petitioners assert that the application papers were deposited with the USPS in Express Mail service on 25 November, 2003.

Paragraph (c) of 37 CFR 1.10 states that:

Any person filing correspondence under 37 CFR 1.10 that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or

other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the papers or fees that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

In regards to paragraph (3) above, petitioner must submit a true copy of the "Express Mail" mailing label showing the "date-in" and any other official notation by the USPS relied upon to show the date of deposit.

With regard to petitioners' reference to a "Certificate of Express Mailing" on the application transmittal sheet, petitioners are reminded that there is no provision in the rules for use of a certificate of mailing when application papers are sent by Express Mail service.¹

Additionally, petitioners may not rely on the USPS Track & Confirm printout showing only the date of delivery (26 November, 2003) as evidence of the date of acceptance of the application. The mere fact that the application was delivered by the USPS on 26 November, 2003, is not proof that the application papers were deposited with the USPS on 25 November, 2003. Rather, petitioners must provide documentation showing the date the application was deposited with the USPS. Petitioners may wish to consider obtaining from the USPS a copy of the record showing when the application was deposited with the USPS, and submitting said record with a renewed petition.

In light of the lack of evidence showing that the application papers were deposited with the USPS on 25 November, 2003, the petition is dismissed.

As no fee is due for petitions filed under 37 CFR 1.10, no fee has been charged.

Further correspondence with respect to this matter should be addressed as follows:

¹The requirement of 37 CFR 1.10(c) for a certificate of mailing has been waived by the Commissioner. See 1174 O.G. Pat. Of. 92 (May 16, 1995).

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Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



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